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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,222	09/29/2003	Kazunari Iwaki	51271/DBP/A400	9785

7590

04/20/2004

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EXAMINER

BELL, KENT L

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- application filed 7/29/03*
- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/5/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413)

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

Detailed Action

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 10, 22, and 23, Applicant states “artificial doubling”. This recitation is unclear as it is not understood what applicant intends “artificial doubling” to mean. If applicant means a self crossing of ‘Sunrenirirepa’ then such should be stated in the specification.

Correction and/or clarification is necessary.

B. Page 1, line 19, Applicant states “branching”. It appears applicant may have intended to state - -branching- -. Correction and/or clarification is necessary.

Detailed Action

C. Page 1, lines 27 and 28, Applicant should delete “at the Omi R&D Center, SUNTORY FLOWERS Ltd.,” as this recitation constitutes unwarranted advertising (MPEP 1610). The current recitation without the recitation stated above is more than adequate.

D. Page 2, lines 5 and 6, Applicant states the instant cultivar is “uniform and stable in its characteristics”. However, this recitation does not mean the instant plant reproduces true to type in successive generations of asexual reproduction. If the plant does reproduce true to type then applicant should also state in the specification - -The new variety reproduces true to type in successive generations of asexual reproduction.- -. Applicant could also set forth this information at page 5, line 17 after “generation.”. If the plant does not reproduce true to type then applicants will be unable to obtain a U.S. Plant Patent on this particular cultivar.

E. Page 5, line 11, Applicant should insert - -of- - after “variety” so the current recitation will read more clearly.

F. Page 5, lines 12 and 13, Applicant should delete “at the Omi R&D Center of SUNTORY FLOWERS LIMITED.,” as this recitation constitutes unwarranted advertising (MPEP 1610). The current recitation without the recitation stated above is more than adequate.

Detailed Action

G. Page 6, line 5, Applicant should set forth in the specification additional information relative to the instant plant including the typical and observed diameter/spread.

H. Page 6, line 13, Applicant should set forth in the specification additional information relative to the instant plant's stem including the typical and observed stem length.

I. Page 6, line 14, Applicant states anthocyanin pigmentation is "Present. Light.". Applicant should set forth in the specification a color designation for the anthocyanin pigmentation. The recitation "Present. Light." simply means anthocyanin pigmentation is present. The recitation "Present. Light." is vague and insufficient in this regard.

J. Page 6, lines 27 and 28, Applicant should set forth in the specification additional information relative to the instant plant's leaf including a typical and observed leaf undersurface coloration with reference to the employed color chart.

K. Page 6, lines 30 and 31, Applicant should set forth in the specification additional information relative to the instant plant's petiole including the typical and observed petiole coloration with reference to the employed color chart.

Detailed Action

L. Applicant should set forth in the specification information relative to the instant plant's bud including the typical and observed shape, length, diameter, and coloration with reference to the employed color chart.

M. Page 6, lines 34-36, Applicant should set forth in the specification additional information relative to the instant plant's flower including the typical and observed flower depth.

N. Page 6, line 37, Applicant states "tubular". It appears applicant may have intended to state - -tube- -. Correction and/or clarification is necessary.

O. Page 6, line 37, to page 7, line 2, Applicant should set forth in the specification additional information relative to the instant plant's floral tube including the typical and observed floral tube diameter.

P. Page 7, lines 1 and 2, Applicant sets forth a coloration for the floral tube. However, it is uncertain whether the coloration set forth is for the floral tube's inner or outer surface. Applicant should set forth in the specification a color designation for the floral tube's inner and outer surface with reference to the employed color chart.

Detailed Action

Q. Page 7, lines 3-5, Applicant sets forth colorations for the petals. However, it is uncertain whether the colorations set forth are for the petal upper or lower surface. Applicant should set forth in the specification color designations for the petal upper and lower surfaces with reference to the employed color chart.

R. Page 7, line 7, Applicant states vertical petal lines are "Present". Applicant should set forth in the specification a color designation for the vertical petal lines with reference to the employed color chart. The recitation "Present" is vague and insufficient in this regard. Further, applicant should set forth in the specification which petal surface the vertical petal lines are on.

S. Applicant should set forth in the specification additional information relative to the instant plant's petals including the typical and observed number, shape, length, width, apex, base, and margin descriptors, and texture.

T. Page 7, lines 9-13, Applicant should set forth in the specification additional information relative to the instant plant's calyx including the typical and observed diameter and coloration (both surfaces) with reference to the employed color chart.

U. Page 7, lines 14 and 15, Applicant states anthocyanin pigmentation is "Present.

Detailed Action

Medium.”. Applicant should set forth in the specification a color designation for the anthocyanin pigmentation. The recitation “Present. Medium.” simply means anthocyanin pigmentation is present. The recitation “Present. Medium.” is vague and insufficient in this regard.

V. Page 7, lines 18 and 19, Applicant should set forth in the specification additional information relative to the instant plant’s peduncle including the typical and observed peduncle coloration with reference to the employed color chart.

W. Page 7, line 20, Applicant states “Cluster. – Absent.”. This recitation is not understood as it is unclear what applicant intends this recitation to mean. Correction and/or clarification is necessary.

X. Page 7, line 21, Applicant states the number of flowers on each stem is “Few”. Applicant should set forth in the specification the typical and observed number of flowers per stem. The recitation “Few” is vague and insufficient in this instance.

Y. Page 7, line 23, Applicant states “Flowering duration. – Medium.”. This recitation is not understood as it is unclear what applicant intends as applicant has already stated the instant plant blooms from “June to November” at page 6, line 9. Correction and/or clarification is

Detailed Action

necessary.

Z. Applicant should set forth in the specification the lastingness of the bloom, on the plant.

AA. Page 7, lines 24 and 25, Applicant states Resistance to diseases and pests is “Moderate”. Applicant should set forth in the specification meaningful information relative to the instant plant’s Resistance to diseases and pests such as stating which disease and pests the instant plant is resistant or susceptible to. The recitation “Moderate” is vague and insufficient in this regard.

AB. If produced, information relative to the instant plant’s seed should be set forth in the specification including the typical and observed seed number, size, and coloration with reference to the employed color chart.

AC. If produced, information relative to the instant plant’s pedicel should be set forth in the specification including the typical and observed pedicel length, diameter, and coloration with reference to the employed color chart.

Detailed Action

AD. Page 1, lines 36 and 37, Applicant states "U.S. Plant Pat. Appln. Serial No. 10/066739". It appears this application has matured into a U.S. Plant Patent, U.S. Plant Patent 14,302. Applicant should verify this information and if accurate applicant should delete the recitation stated above and insert - -U.S. Plant Patent 14,302- -.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Comments

Applicant should note the new amendment format which is now mandatory (Web site stated below).

Detailed Action

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicant should send all correspondence to the following address:

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (571) 272-1600.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell